Choong Sheng Development Sdn Bhd v Corak Nakhoda Sdn Bhd

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO B-02–2231 OF 2009
KN SEGARA, MOHD HISHAMUDIN JJCA AND AZAHAR MOHAMED J
6 APRIL 2011

Civil Procedure — Jurisdiction of court — High Court — Territorial jurisdiction — High Court of Malaya distinct from High Court in Sabah and Sarawak — Whether High Court in Sabah and Sarawak or High Court of Malaya had territorial jurisdiction over case — Courts of Judicature Act 1964 s 23(1)(a), (b) & (c)

The appellant and respondent both have their registered offices in Sabah. The appellant's claim against the respondent was for the non-payment of the balance contract sum of RM1,593,553.44 for the plantation works carried out by the appellant for the respondent in the respondent's land in Tawau, Sabah, as agreed upon in the plantation agreement executed by both parties in Sabah. The appellant had instituted legal proceedings against the respondent in the High Court of Sabah and Sarawak at Tawau ('the Tawau writ') for the non-payment of the said contract sum and obtained a judgment in default of appearance. However, the respondent had obtained an order to set aside the judgment in default on the grounds that there were triable issues to be tried. The respondent then filed a writ and statement of claim against the appellant in the High Court of Malaya at Shah Alam ('the Shah Alam writ') for alleged damages and loss of RM6,463,010.14 arising from the breach of contract vide the plantation agreement. The appellant's application to strike out the Shah Alam writ for want of territorial jurisdiction was dismissed by the judicial commissioner ('the JC'). This was the appellant's appeal against that decision.

Held, allowing the appeal with costs:

(1) The JC had erred and misdirected herself in appreciating the facts unfolded before her on the issue of territorial jurisdiction in this case. The JC failed to appreciate the fact that both the appellant and the respondent were incorporated and had their business conducted in Sabah, which was in the territorial jurisdiction of the High Court of Sabah and Sarawak. Further, the plantation agreement was to be performed in Sabah. Thus the cause of action, ie the alleged breach of the plantation agreement, occurred in Sabah. As such, the High Court in Malaya could not confer territorial jurisdiction on itself over the case as the Shah Alam writ could

not meet any of the criteria under s 23(1)(a), (b) or (c) of the Courts of Judicature Act 1964 (see paras 10 & 15).

(2) The JC had misdirected herself and erred when she accepted the respondent's claim that its business address was in Klang, as this claim was not supported by any contemporaneous evidence (see para 11).

[Bahasa Malaysia summary

Perayu dan responden kedua-duanya telah mendaftarkan pejabat-pejabatnya di Sabah. Tuntutan perayu terhadap responden adalah kerana tidak membayar jumlah baki kontrak sebanyak RM1,593,553.44 untuk kerja-kerja ladang yang dijalankan oleh perayu untuk responden di tanah responden di Tawau, Sabah, seperti yang dipersetujui di dalam perjanjian ladang yang disempurnakan oleh kedua-dua pihak di Sabah. Perayu telah memulakan prosiding undang-undang terhadap responden di Mahkamah Tinggi Sabah dan Sarawak di Tawau ('writ Tawau') kerana tidak membayar jumlah kontrak tersebut dan memperolehi penghakiman ingkar kehadiran. Walau bagaimanapun, responden telah memperolehi perintah untuk mengenepikan penghakiman ingkar tersebut atas alasan bahawa terdapat isu-isu yang boleh dibicarakan. Responden kemudiannya memfailkan writ dan penyata tuntutan terhadap perayu di Mahkamah Tinggi Shah Alam ('writ Shah Alam') untuk ganti rugi dan kerugian yang didakwa berjumlah RM6,463,010.14 berbangkit daripada kemungkiran kontrak vide perjanjian ladang tersebut. Permohonan perayu untuk membatalkan writ Shah Alam untuk mendapatkan bidang kuasa wilayah ditolak oleh pesuruhjaya kehakiman ('PK'). Ini adalah rayuan perayu terhadap keputusan tersebut.

Diputuskan, membenarkan rayuan dengan kos:

(1) PK tersilap dan tersalah arah diri dalam menilai fakta yang dikemukakan di hadapan beliau atas isu bidang kuasa wilayah dalam kes ini. PK gagal untuk menilai fakta bahawa kedua-dua perayu dan responden adalah ditubuhkan dan menjalankan perniagaannya di Sabah, yang mana adalah dalam bidang kuasa wilayah Mahkamah Tinggi Sabah dan Sarawak. Selanjutnya, perjanjian ladang tersebut dilaksanakan di Sabah. Oleh itu, kausa tindakan, iaitu kemungkiran perjanjian ladang yang didakwa tersebut, berlaku di Sabah. Oleh itu, Mahkamah Tinggi Malaya tidak dapat membangkitkan bidang kuasa wilayah untuknya ke atas kes tersebut memandangkan writ Shah Alam tidak dapat mematuhi mana-mana kriteria di bawah s 23(1)(a), (b) atau (c) Akta Mahkamah Kehakiman 1964 (lihat perenggan 10 & 15).

(2) PK telah tersalah arah dirinya dan tersilap apabila beliau menerima tuntutan responden bahawa alamat perniagaannya adalah di Kelang, memandangkan tuntutan ini tidak disokong oleh mana-mana keterangan semasa (lihat perenggan 11).]

Notes

For cases on High Court, see 2(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 5135–5137.

Legislation referred to

Courts of Judicature Act 1964 s 23, 23(1)(a), (b), (c)
Federal Constitution art 121

Appeal from: Civil Suit No MT3–22–290 of 2006 (High Court, Shah Alam)

Leong Yeng Kong (Leong Yeng Kit & Co) for the appellant.
Susani Mohd Zain (Mohd Zain & Co) for the respondent.

KN Segara JCA (delivering judgment of the court):

[1] The appeal before us involves only one primary issue of whether the High Court of Malaya at Shah Alam or the High Court of Sabah and Sarawak at Tawau has *territorial jurisdiction* over this case.

[2] It is very clear from art 121 of the Federal Constitution that there are two separate High Courts in Malaysia exercising distinct *territorial jurisdiction* over different geographical areas of the country. There is the High Court in Malaya and there is the High Court in Sabah and Sarawak. There is no provision in any federal legislation conferring power upon one High Court to transfer proceedings to the other, in the context of these two separate High Courts. While matters can be heard in any court of the courts of Malaya, it was not the intention of the Legislature for any court in Malaya to assume jurisdiction of a matter arising in, or, which should be filed in the states of Sabah and Sarawak.

[3] The appellant is a limited company incorporated in Malaysia, having its registered office at …, *Lahad Datu, Sabah,* Malaysia.

[4] The respondent is a limited company incorporated in Malaysia and having its registered address at …, *Kota Kinabalu, Sabah,* Malaysia.

[5] The appellant entered into a plantation agreement dated 7 August 2000 with the respondent in which the appellant had agreed to carry out oil palm plantation works for the respondent in the respondent's land in the district of Tawau referred to as the 'Tongod Estate'. The appellant alleged that as at 13 July 2005, the respondent was indebted to the appellant for the sum of RM1,593,553.44, being the balance contract sum due and owing for the plantation works completed by the appellant at Tongod Estate, under the plantation agreement.

[6] The appellant had demanded for this balance owing by letter dated 13 July 2005, and 28 February 2006, giving it seven days (ie till 27 March 2006), to pay the said balance of contract sum for the plantation works, failing which legal proceedings would be instituted. The appellant, thereafter, filed the writ and statement of claim dated 21 April 2006 against the respondent in the High Court of Sabah and Sarawak at Tawau (the Tawau writ) and served the same on the respondent, at its registered and business address in Kota Kinabalu and obtained a judgment in default of appearance on 9 June 2006. In the Tawau writ, the appellant was the plaintiff and, the respondent was the defendant. On 3 November 2006, the deputy registrar of the High Court at Tawau set aside the judgment in default on the ground that there were triable issues to be tried in the Tawau High Court.

[7] The respondent filed a writ and statement of claim, dated 20 March 2006, against the appellant in the High Court of Malaya at Shah Alam (the Shah Alam writ). In the Shah Alam writ, the respondent was the plaintiff, and the appellant was the defendant. The respondent's cause of action, as plainly manifested in the Shah Alam writ, is for breach of contract vide the plantation agreement dated 7 August 2000 and, thus the consequential claim for the alleged damages/loss of RM6,463,010.14.

[8] The appellant, by summons in chambers dated 5 July 2006, applied to strike out the Shah Alam writ for want of territorial jurisdiction. The judicial commissioner dismissed the application. We are unanimous that the judicial commissioner had erred and misdirected herself in appreciating the facts unfolded before her, on the issue of *territorial jurisdiction*, in this case.

[9] The factors determining the territorial jurisdiction of the High Court in civil matters are laid down in s 23 of the Courts of Judicature Act 1964, which provides:

> Civil Jurisdiction — general
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> (1) Subject to the limitation contained in Article 128 of the Constitution the High Court shall have jurisdiction to try all civil proceedings where —
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> (a) the cause of action arose, or
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> (b) the defendant or one of several defendants resides or has his place of business, or
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> (c) the facts the proceedings are based exist or alleged to have occurred, or
>
> (d) any land the ownership of which is disputed is situated, within the local jurisdiction of the Court and notwithstanding anything contained in this section in any case where all the parties consent in writing within the local jurisdiction of the other High Court.
>
> (2) Without prejudice to the generality of subsection (1), the High Court shall have

such jurisdiction as was vested in it immediately prior to Malaysia day and such other jurisdiction as was vested in it by any written law in force within its local jurisdiction.

[10] On the facts before the High Court, at Shah Alam, where did the cause of action arise? It is crystal clear that the judicial commissioner had clearly erred when she failed to appreciate the fact that both, the appellant and the respondent, were companies incorporated and having their business conducted in Sabah, in the territorial jurisdiction of the High Court of Sabah and Sarawak. Further, the plantation agreement speaks for itself as to where the contract was to be executed in respect of the plantation works. In the circumstances, any breach in relation to the plantation works would naturally and logically arise, without a doubt, at Tongod Estate in Sabah.

[11] We are unanimous that the judicial commissioner had misdirected herself and erred when she accepted the respondent's claim of having a business address at No 55 Jalan Goh Hock Huat, 41400 Klang, Selangor, when this was not supported by any contemporaneous evidence. Such a finding is contrary to the undisputed records of the companies commission of Malaysia that recorded the registered and business address of the respondent at Unit 8-7, 8th Floor Menara MAA, No 6, Lorong Api-Api 1, Kota Kinabalu, Sabah.

[12] Although the Tawau writ and the Shah Alam writ arise out of and relating to the very same plantation agreement entered between the parties, nevertheless, the Tawau writ is a claim for balance of money due on the contract, whereas, the Shah Alam writ is a claim for alleged damages/loss claimed by the respondent, arising from the alleged breach of the plantation agreement by the appellant.

[13] We are unanimous that the plaintiff's (respondent's) cause of action, in respect of the Shah Alam writ, is for damages for alleged breach of contract and not for payment of money due and owing by the defendant (appellant), to be paid in Klang. The judicial commissioner had misdirected herself when she failed to consider the material evidence of earlier payments for plantation works by the respondent to the appellant in Lahad Datu.

[14] We are unanimous that the breach of contract (if any) occurred in Sabah. The learned judicial commissioner fell into error when she held, '… saya berpendapat kausa tindakan berlaku di Klang dan oleh itu tindakan plaintiff memfailkan writ Shah Alam plaintiff ini adalah tidak salah'.

[15] The defendant (appellant), in the Shah Alam writ, has its place of business and registered office in Sabah. The cause of action arises out of the alleged breach of the plantation agreement, to be performed in Sabah.

Therefore, the High Court in Malaya cannot confer territorial jurisdiction on itself over the case, filed by the plaintiff (respondent) in Shah Alam, as the Shah Alam writ cannot meet any of the criteria under s 23(1)(a), (b) or (c) of the Courts of Judicature Act 1964.

[16] We are unanimous that only the High Court in Sabah and Sarawak at Tawau has territorial jurisdiction over the case filed by the respondent at Shah Alam, on the factual matrix presented to the court.

[17] Appeal allowed with costs fixed at RM3,000. Deposit refunded to the appellant.

Appeal allowed with costs.

Reported by Kohila Nesan